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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ROYAL DUTCH PETROLEUM COMPANY, *et al.*,
Petitioners,

v.

KEN WIWA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION

HAROLD HONGJU KOH
JAMES J. SILK
DEENA HURWITZ
ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC
YALE LAW SCHOOL
P.O. Box 208125
New Haven, CT 06510
(203) 432-4932

JUDITH BROWN CHOMSKY *
LAW OFFICE OF JUDITH BROWN CHOMSKY
P.O. Box 29726
Elkins Park, PA 19027
(215) 782-8367

* Counsel of Record

(Additional Counsel listed on inside front cover)

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JODIE L. KELLEY
JENNER & BLOCK
603 13th Street, NW
Washington, D.C. 20005
(202) 639-6058

PAUL HOFFMAN
SCHONBRUN, DE SIMONE, SEPLOW, HARRIS & HOFFMAN
723 Ocean Front Walk
Venice, CA 90210
(310) 396-7031

RICK HERZ
EARTHRIGHTS INTERNATIONAL
2012 Massachusetts Avenue, NW
Washington, D.C. 20036
(202) 466-5188

JENNIFER M. GREEN
BETH STEPHENS
MICHAEL RATNER
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor New York, NY 10012
(212) 614-6431

JULIE SHAPIRO
SEATTLE UNIVERSITY SCHOOL OF LAW
900 Broadway
Seattle, WA 98122
(206) 398-4043

February 21, 2001

Counsel for Respondents

QUESTIONS PRESENTED

(1) Whether the Court of Appeals properly applied the *forum non conveniens* balancing test mandated by *Piper Aircraft Co. v. Reyno* and *Gulf Oil Corp. v. Gilbert* in this case.

(2) Whether a federal district court may exercise personal jurisdiction over a corporation that maintains a substantial and continuous corporate presence in New York by employing a local agent and funding a local Investor Relations Office that invests more than half a million dollars annually to promote U.S. investor-related activity.

(3) Whether a federal district court may exercise original jurisdiction under the Alien Tort Claims Act, 28 U.S.C. § 1350 (2000), over a suit by an alien, for torts only, committed in violation of the law of nations.

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IN THE

Supreme Court of the United States

No. 00-1168

Royal Dutch Petroleum Co., *et al.*,

Petitioners,

vs.

Ken Wiwa, *et al.*,

Respondents.

BRIEF IN OPPOSITION

SUMMARY OF ARGUMENT

Respondents Ken Wiwa, *et al.*, oppose Royal Dutch Petroleum's and Shell Transport's petition for a writ of certiorari because the decision below is correct and warrants no further review, particularly in its current interlocutory posture. Petitioners seek review of a unanimous, fact-specific preliminary ruling, which correctly applies settled law, upon which the circuits are not divided, which presents no extraordinary issue, and which simply remands for proceedings on a motion to dismiss that is currently pending before the U.S. District Court for the Southern District of New York.

Petitioners now ask this Court to disrupt these orderly proceedings to consider four questions – some of them subsumed within their ongoing district court motion – none of which comes close to the "compelling reasons" required by

Supreme Court Rule 10. Review of any of these questions would be entirely premature and a waste of this Court's resources.

Petitioners' first two Questions Presented, *see* Pet. at (i), challenge a correct, unremarkable, and fact-specific application of this Court's well-settled *forum non conveniens* decisions in *Piper Aircraft Co v. Reyno*, 454 U.S. 235 (1981) and *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). Their third question challenges a fact-specific issue correctly decided below: that a federal district court may exercise personal jurisdiction over a corporation that maintains a substantial and continuous corporate presence in New York, by, *inter alia*, conducting activities there through its agent, bearing the full expenses of an Investor Relations Office in New York that invests more than half a million dollars annually in promoting U.S. investor-related activity, and employing a manager in New York who organizes meetings in New York.

Finally, petitioners' fourth question appends to their fact-specific venue challenge a novel assault on the district court's subject matter jurisdiction.[1] Petitioners now ask this Court to reach out to overturn a decades-old line of precedent, which is plainly correct, supported by more than two hundred years of judicial, legislative, and executive interpretation, and follows an unbroken line of federal court rulings implementing the unambiguously stated will of Congress in both the Alien Tort Claims Act, 28 U.S.C. § 1350 (2000) ("ATCA") and the Torture Victim Protection Act of 1991, 28 U.S.C. § 1350 Notes (2000) ("TVPA"). Following the ATCA's precise words, the

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[1]This issue was never raised, briefed nor argued below until the petition for rehearing *en banc*, only then to be rejected by the full Second Circuit without comment. (App. E-1.)

lower courts reaffirmed without dissent that a federal district court may exercise original subject matter jurisdiction over a suit by aliens, for torts only, committed in violation of the law of nations. On remand, the District Court is currently examining whether petitioners' actions alleged in this case constitute tortious conduct in violation of the law of nations for purposes of the ATCA. Should petitioners persuade the District Court that no such violations of the law of nations occurred here, the Court below would be free to dismiss this suit for lack of subject matter jurisdiction, precisely the result that petitioners would now have this Court dictate.

Significantly, petitioners question only one of three grounds of subject matter jurisdiction cited in respondents' amended complaint. Thus, even if this Court were to grant certiorari and preemptively eliminate subject matter jurisdiction based on the ATCA, the lower court would still have to consider two alternate grounds for subject matter jurisdiction, the general federal question provision of 28 U.S.C. § 1331 (2000) and the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 (2000) ("RICO"). Substantial pretrial orders have been issued by the District Court, and the factual record will soon be expanded on remand. Should respondents win at trial and again on appeal, this Court would be free to review the entire judgment – including all jurisdictional rulings – on a fully developed record, avoiding the needless piecemeal litigation that granting this interlocutory petition would engender.

In sum, petitioners present no reason why this Court should prematurely intervene to reassess facts correctly determined by the lower courts or to prejudge a motion to dismiss that is currently before the District Court. This Court

should deny petitioners' invitation to waste its scarce resources on such pointless interlocutory and advisory review.

STATEMENT OF THE FACTS

I. Background

Respondents Ken Wiwa, Owens Wiwa, Jane Doe, and Blessing Kpuinen are Nigerian nationals.[2] Petitioners Royal Dutch Petroleum Co. and "Shell" Transport and Trading Company P.L.C. are Dutch and British holding companies, which together operate and control the Royal Dutch/Shell Group, a multinational, vertically integrated network of affiliated oil and gas companies that includes Shell Petroleum Development Company of Nigeria, Ltd. ("SPDC"), a wholly-owned Nigerian subsidiary. (App. A-3.) SPDC engages in extensive oil exploration and development activity in the Ogoni region of Nigeria. (App. A-3.)

According to the amended complaint, whose allegations must be taken as true for purposes of this petition, respondents and their next of kin were imprisoned, tortured, and killed by the Nigerian government in violation of the law of nations at the instigation of petitioners, in reprisal for their political opposition to SPDC's oil exploration activities in Nigeria. SPDC coercively expropriated land in the Niger Delta for oil development without adequate compensation, substantially polluting the air and water in the homeland of the Ogoni people. (App. A-3 to A-4.)

Ken Saro-Wiwa, respondent Owens Wiwa's brother and Ken Wiwa's father, became an outspoken opposition leader and

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[2]Kpuinen and Owens Wiwa lived in the United States at the time that petitioners' motion to dismiss was filed in this case. (App. A-7.)

President of the Movement for the Survival of the Ogoni People ("MOSOP"), a human rights organization established to protect the rights of the Ogoni people. Blessing Kpuinen's husband, John, became a leader of MOSOP's youth wing. Over time, SPDC recruited the Nigerian police and military to attack local villages and to suppress organized opposition to its development activity. (App. A-4.) Saro-Wiwa and John Kpuinen were repeatedly arrested, detained, and tortured by the Nigerian government because of their leadership roles in the protest movement. (App. A-4.)

In spring 1995, petitioners' agents met with top Nigerian military officers to discuss common strategy regarding Saro-Wiwa and the Ogoni campaign, and to plan a joint media campaign. (App. G-13.) Petitioners promised bribes to at least two key witnesses to give false testimony against Saro-Wiwa and held meetings with the Nigerian military regime to discuss strategies concerning the unlawful execution of Saro-Wiwa. (App. A-5; App. G-14.) Brian Anderson, the Managing Director of SPDC and an agent of Royal Dutch/Shell, met with respondent Owens Wiwa and offered to trade Saro-Wiwa's freedom for an end to the international protests against petitioners. (App. G-14.)

In November 1995, Saro-Wiwa and Kpuinen were hanged, along with other Ogoni leaders, after being convicted of murder by a special military tribunal, based on fabricated evidence and without due process protections. (App. A-4; App. G-15.) Respondent Owens Wiwa was illegally detained by Nigerian authorities; respondent Jane Doe was beaten and shot by the Nigerian military while protesting the destruction of her property during a 1993 raid upon her village. (App. A-4.) These abuses, carried out by the Nigerian government and military, were instigated, orchestrated, planned, and facilitated

by SPDC under the direction of Royal Dutch/Shell. (App. A-4.) Petitioners directly or indirectly provided money, weapons, intelligence, and logistical support to the Nigerian military – including the motor vehicles, patrol boats, and ammunition used in village raids – and participated in the campaign to fabricate murder charges, to arrest and execute Saro-Wiwa and Kpuinen, and to bribe two witnesses to give false testimony against them. (App. A-4 to A-5; App. G-7 to G-8.)

II. Proceedings Below

Respondents filed this action on November 8, 1996 (followed later by an amended complaint), invoking federal question jurisdiction under 28 U.S.C. § 1331, and seeking damages against petitioners under the Alien Tort Claims Act, RICO, international law and treaties, Nigerian law, and various state law torts. (App. A-6.) The ATCA states that "the district courts shall have original jurisdiction of *any* civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350 (emphasis added). Following the ATCA's precise words, respondents alleged that petitioners had committed torts in violation of the law of nations, including summary execution; crimes against humanity; torture; cruel, inhuman, or degrading treatment; arbitrary arrest and detention; and violations of the rights to life, liberty, security of the person, and peaceful assembly and association. (App. A-6 to A-7.)

Petitioners filed a motion to dismiss for lack of personal jurisdiction, *forum non conveniens*, and failure to state a claim upon which relief could be granted. The United States District Court for the Southern District of New York (Wood, J.) found that personal jurisdiction over the petitioners was established under New York law by virtue of their maintenance of an Investor Relations Office in New York, but granted petitioners'

motion to dismiss for *forum non conveniens* to the United Kingdom, subject to certain conditions.

On respondents' appeal, the United States Court of Appeals for the Second Circuit (Leval, Oakes & Pooler, JJ.) reversed and remanded to the District Court for further proceedings. The panel (1) ruled that the District Court had correctly found personal jurisdiction, based, *inter alia,* on the fact that petitioners' Investor Relations Office was continuously present and hence "doing business" in the State of New York, and (2) reversed the dismissal for *forum non conveniens*, reasoning that the District Court had misapplied this Court's decisions in *Piper* and *Gilbert.* In particular, the panel found that the lower court had given too little weight to three of the *Piper* factors: the U.S. resident plaintiffs' choice of forum, the interests of the United States in furnishing a forum to litigate congressionally recognized claims for torts in violation of the law of nations, and the relative inconvenience of pursuing the case before a British court. The Court of Appeals remanded to the District Court to consider petitioners' motion to dismiss for failure to state a claim upon which relief can be granted, which includes a challenge to subject matter jurisdiction under the ATCA.[3] (App. A-34.) Without dissent, the Second Circuit denied both rehearing and rehearing *en banc.* (App. E-1.) On February 16, 2001, petitioners filed their renewed motion to dismiss before the District Court, where it is currently awaiting decision.

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[3]The Second Circuit expressed no view on a range of petitioners' objections – including the Act of State and political question doctrines and choice of law – upon which the District Court had deferred judgment.

REASONS FOR DENYING THE WRIT

The writ should be denied because review of the Second Circuit's decision would be premature and a waste of this Court's scarce resources. Petitioners identify no "compelling reasons" warranting review at this stage, *see* SUP. CT. R. 10, nor any issues on which the circuits are divided. Prudential considerations bar review of the four questions raised by petitioners, all of which address issues that are either fact-specific or governed by clear and uncontroversial holdings of this Court. This Court should not sit as a court of error to redo the court of appeals' unremarkable determinations regarding *forum non conveniens* and personal jurisdiction, nor should it issue an advisory ruling regarding the ATCA, when a motion challenging jurisdiction under that act is currently pending before the District Court.

I. CERTIORARI REVIEW IS PREMATURE

Petitioners seek review of a unanimous interlocutory ruling that simply remands for pretrial proceedings that are currently ongoing before the District Court. To interrupt these proceedings would ensnare this Court in fact-specific questions that ought not be reviewed absent a fuller factual record. This Court grants petitions for certiorari "only for compelling reasons," SUP. CT. R. 10, and reviews interlocutory orders "sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision." *Hamilton Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).[4]

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[4]As Justice Scalia recently noted, "[W]e generally await final judgment in the lower courts before exercising our jurisdiction." *Virginia Military Institute v. United States*, 508 U.S. 946 (1993) (Scalia, J., concurring in the denial of certiorari) (citations omitted). Denying certiorari would "import[]

This concern applies with special force to petitioners' Question Four, a subject-matter jurisdiction challenge that petitioners concede was never raised, briefed, argued, nor decided before their petition for rehearing *en banc*. Pet. at 12 n.8. Even when this Court clearly has the power to do so, it does not gratuitously reach out to decide questions that were "neither raised nor resolved" in earlier proceedings in the same case. *Glover v. United States*, – U.S. –, 121 S. Ct. 696, 701 (Jan. 9, 2001).[5] Even if this Court "may have jurisdiction to consider an issue not raised below, it is generally reluctant to do so," so that the lower courts may first pass on the question, thus giving this Court an adequate factual and legal record for certiorari review. *Berkemer v. McCarty*, 468 U.S. 420, 443 (1984).

For three reasons, granting certiorari here to consider the propriety of subject matter jurisdiction under the ATCA would be particularly pointless. First, two alternative statutory bases for subject matter jurisdiction exist: the general federal question provision, 28 U.S.C. § 1331, and RICO. (App. G-3.) Thus, even if this Court were to grant certiorari specifically to deny the existence of subject matter jurisdiction under the ATCA, this case could still proceed to judgment under the alternative bases of jurisdiction, potentially returning to this Court later for post-judgment review. Second, petitioners grossly distort the truth by

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no expression of opinion upon the merits of [the] case," but rather, would ensure that the lower courts and, if need be, this Court would ultimately review this case on a fully developed, not fragmented, record. *House v. Mayo*, 324 U.S. 42, 48 (1945).

[5]See also *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook Railroad Co.*, 389 U.S. 327, 328 (1967) (holding that case is "not yet ripe for review" where the court of appeals ruled on several legal issues, but remanded the case to the district court to consider various others).

suggesting that, absent certiorari review, the Second Circuit's interpretation of the ATCA in *Filártiga v. Peña-Irala*, 630 F. 2d 876 (2d Cir. 1988) will "*require* the exercise of the subject-matter jurisdiction over the action on remand." Pet. at 12 n.8 (emphasis added). By reversing the lower court's venue ruling, the Second Circuit remanded this case to the District Court to consider whether to grant petitioners' motion to dismiss the complaint for failure to state a claim for a "tort in violation of the law of nations." (App. A-34.) Should the District Court so find, it would necessarily dismiss the suit for lack of subject matter jurisdiction, because the ATCA permits only federal lawsuits that are founded on such torts. Third and most fundamentally, petitioners ask this Court prematurely to address the *constitutionality* of the Second Circuit's *Filártiga* doctrine. Pet. at 25. Yet this Court does not sit to police all constitutional issues in all cases, without regard to whether they are in fact squarely presented or necessarily decided. It would violate this Court's most fundamental principles to prematurely grant certiorari to review constitutional issues when the lower courts might obviate such review by resolving this case based on fact-specific application of this or other jurisdictional statutes.[6]

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[6]In considering whether subject matter jurisdiction exists on remand, the District Court will consider petitioners' deferred objections that "Plaintiffs Have Not Sufficiently Alleged a Nexus Between a Corporate Entity and the Nigerian Government" and that "Plaintiffs Have Not Alleged Facts Sufficient to Hold These Defendants Responsible For Their Indirect Subsidiary." Defendants' Reply Memorandum of Law in Support of their Motion to Dismiss the Amended Complaint at ii (September 29, 1997). *Cf. Ticor Title Ins. Co. v. Brown*, 511 U.S. 117 (1994) (dismissing certiorari as improvidently granted after concluding that "deciding this case would require us to resolve a constitutional question that may be entirely hypothetical"); *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984) (holding that the Court normally "will not decide a constitutional question if there is some other ground upon which to dispose of the case"); *Spector Motor Serv. v. McLaughlin*, 323 U.S. 101, 105 (1945) ("If there is one

II. THE COURT OF APPEALS PROPERLY APPLIED THE *FORUM NON CONVENIENS* BALANCING TEST MANDATED BY *PIPER AIRCRAFT CO. V. REYNO* AND *GULF OIL CORP. V. GILBERT.*

Petitioners' first two questions seek review based on an entirely unremarkable weighing of factors enumerated in this Court's two leading *forum non conveniens* decisions, *Piper* and *Gilbert*. Even if plainly incorrect, such fact-dependent balancing would not warrant this Court's certiorari review. Here, the Second Circuit's analysis not only correctly applies this Court's own decisions in *Piper* and *Gilbert*, but is also fully consistent with decisions of other circuits.

Petitioners claim that the Second Circuit rendered the doctrine of *forum non conveniens* a "virtual nullity." Pet. at 14. In fact, the Court of Appeals engaged in precisely the kind of straightforward multifactor balancing that *Piper* and *Gilbert* mandate. Applying the *Piper/Gilbert* test, the Second Circuit explicitly recognized that *forum non conveniens* analysis involves a two-step inquiry into: (1) whether there is an adequate alternative forum, and (2) assuming one exists, whether a balance of the *Gilbert* private and public interest factors tipped for or against dismissing the case to that alternative forum. (App. A-18.) In conducting that inquiry, the Second Circuit appropriately gave weight to the forum chosen by respondents and the interests of the U.S., expressed in the ATCA, as factors weighing in favor of retaining U.S. jurisdiction. The Second Circuit carefully did not hold that foreigners resident in the United States may *always* defeat *forum non conveniens*

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doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.").

motions.[7] (App. A-24.) Instead, the panel directed that "the district court should consider whether, in view of the plaintiff's U.S. residence, such a dismissal would cause plaintiff significant hardship," a determination that it found cut in respondents' favor. (App. A-24.)[8]

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[7]Instead of mandating "a rigid rule of decision protecting U.S. citizen or resident plaintiffs from dismissal for *forum non conveniens*," the Second Circuit cited this Court's holding that "the plaintiff's choice of forum should rarely be disturbed," *Gilbert*, 330 U.S. at 508, (App. A-21), to hold that a "plaintiff's lawful U.S. residence *can* be a meaningful factor supporting the plaintiff's choice of a U.S. forum" as his or her home forum (App. A-22) (emphasis added). The panel recognized that *forum non conveniens* dismissal should not turn on a mechanistic evaluation of plaintiff's residence or citizenship, but rather, on a relative balancing of conveniences, with special focus on the hardship the plaintiff would face if the suit were sent to a foreign forum. *Cf. Koster v. (American) Lumbermens Mutual Casualty Co.*, 330 U.S. 518, 524 (1947) ("In any balancing of conveniences, a real showing of convenience by a plaintiff who has sued in his home forum will normally outweigh the inconvenience the defendant may have shown."). Here, respondents demonstrated the clear convenience of suing in New York, and petitioners failed to demonstrate the inconvenience of defending there.

[8]As proof that the panel's decision is "outside the mainstream of *forum non conveniens* law," Pet. at 19, petitioners cite its alleged inconsistency with Judge Cabranes' dissent in *DiRienzo v. Philips Servs. Corp.*, 223 F.3d 49 (2d Cir. 2000). Yet even if true, this would hardly make it a matter for this Court to correct, as opposed to the Second Circuit via rehearing *en banc*, a step that no Second Circuit judge (including Judge Cabranes) saw fit to request. In *DiRienzo*, Judge Cabranes explicitly recognized that the Second Circuit's decision here did not set forth a rigid rule favoring rentention of cases when at least one plaintiff is a foreign resident. *See DiRienzo*, 223 F.3d at 77 (Cabranes, J., dissenting) ("Although in *Wiwa* we held that the district court erred in failing to count in favor of the plaintiffs' choice of forum that "two of them were residents of the United States," we also stated clearly that *the key question underlying the relevance of that factor is whether a dismissal for forum non conveniens "would cause plaintiff significant hardship.*") (citation omitted; emphasis adde).

Petitioners claim this ruling conflicts with the Ninth Circuit's decision in *Gemini Capital Group, Inc. v. Yap Fishing Corp.*, 150 F.3d 1088 (9th Cir. 1998). Yet on examination, there is no meaningful difference between the *forum non conveniens* principles applied in the two cases, which, under *Piper/Gilbert* balancing analysis, simply reached different outcomes based on their different fact patterns.[9] Nor is there any basis for petitioners' charge that the Second Circuit "conflated" the *Piper/Gilbert* analysis (App. A-20) by issuing a blanket rule rejecting application of *forum non conveniens* to cases arising under the ATCA.[10] Far from giving the statutory cause of action dispositive weight, the Second Circuit properly held that, when analyzing the "public interest" factors set forth in *Gilbert*, the

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[9]*Gemini* involved a U.S. corporate plaintiff, suing in a U.S. forum that was not its home state, against defendants who demonstrated that the incident from which the claim arose occurred in the alternative forum. Plaintiffs neither relied on the ATCA nor demonstrated serious hardship or inconvenience from litigating where the incident occurred. Here, by contrast, the forum where the incident arose (Nigeria) is both unavailable and inadequate. U.S. resident plaintiffs who have been provided specifically with a U.S. forum under the ATCA are suing defendants who have failed to demonstrate substantial interests favoring their preferred alternative forum, Great Britain. (App. A-31 to A-32.) Significantly, the Second Circuit did not decide whether a British forum would in fact be adequate to try this human rights case. (App. A-20.) Instead, the Court assumed *arguendo* the adequacy of the British forum, but determined that *Gilbert's* public and private interest factors weighed more strongly in favor of retention. (App. A-20 to A-21.)

[10]In *In re Estate of Marcos Human Rights Litigation*, 978 F.2d 493, 500 (9th Cir. 1992), which petitioners falsely treat as a conflicting Ninth Circuit decision, Pet. at 15, the court clearly noted that doctrine of *forum non conveniens* is fully available in ATCA cases. *Id.* at 500. The Second Circuit similarly recognized the availability of dismissal here, but concluded that, under the facts of this case, petitioners had failed to establish that the *Gilbert* private and public factors balanced in favor of dismissal.

U.S. interest (expressed in the ATCA) in providing aliens with a federal forum for the adjudication of tort claims in violation of international law is but one of many factors weighing in favor of retention of jurisdiction. (App. A-26 to A-34.)

In a serious misrepresentation, petitioners allege that the Second Circuit "concluded that the policy expressed in the TVPA and the United States residence of two of the plaintiffs outweighed the considerations favoring trial in England." Pet. at 12. In fact, the Second Circuit explicitly stated that these two factors are *not* dispositive.[11] Although petitioners disingenously claim that the Second Circuit denied *forum non conveniens* dismissal "because of a special policy favoring receptivity of such claims" embodied in the Torture Victim Protection Act, Pet. at (i), the Second Circuit made clear that "[t]he other considerations favoring retention of jurisdiction sufficiently outweigh the defendants' claim for dismissal that *we would reach the same result without consideration of the policy interest we have found to be expressed by the TVPA.*" (App. A-34 n.14; emphasis added.) *See also* App. A-30 ("This is not to suggest that the TVPA has nullified, or even significantly diminished, the doctrine of forum non conveniens.").

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[11] "The issue of *forum non conveniens* is *not settled by adding to the mix the considerations favoring retention arising from the U.S. residence of two of the plaintiffs and the policy expressed in the TVPA favoring adjudication of claims of torture in violation of international law.* If the defendants advanced substantial interests supporting dismissal in favor of a British forum we would either remand to the district court for reconsideration or . . . sustain the dismissal notwithstanding our identification of interests in favor of retention that the district court did not consider. *In our view, however, the defendants have offered only minimal considerations in support of an English forum.*" (App. A-31 to A-32; emphasis added.)

In sum, the Second Circuit issued no novel or problematic ruling regarding *forum non conveniens*. It merely applied the *Piper/Gilbert* factors and found that the balancing favored respondents' chosen forum. Petitioners' first two Questions Presented raise no issues of compelling national importance demanding this Court's review, only ones upon which petitioners failed to carry their factual burden before the lower courts. This Court should not now review a fact-specific venue motion simply because petitioners failed to do their job below.

III. A FEDERAL DISTRICT COURT MAY EXERCISE PERSONAL JURISDICTION OVER A CORPORATION THAT MAINTAINS A SUBSTANTIAL AND CONTINUOUS CORPORATE PRESENCE IN NEW YORK.

Contrary to the petitioners' contention, the Second Circuit opinion does not expand the jurisdictional reach of New York federal courts, nor does it conflict with rulings of other circuits. Instead, the Second Circuit engaged in a routine application of established personal jurisdiction law to specific facts. As petitioners note, whether a defendant's activity supports the exercise of personal jurisdiction consistent with due process "depend[s] . . . upon the *quality and nature* of the activity" of the defendants. Pet. at 22 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (emphasis added by petitioners)). Here, the Second Circuit carefully examined the quality and nature of the defendants' activities as set forth in the record and – based on that fact-specific examination – found the exercise of personal jurisdiction comfortably within both statutory and constitutional limits.

Petitioners hyperbolically claim that "the Second Circuit invented a new standard for obtaining general personal

jurisdiction over multinational corporations that do not conduct, or even solicit, business in the United States," based largely on their listing with the New York Stock Exchange ("NYSE"). Pet. at 21. In fact, the appellate court simply applied settled case law to the factual record before it and upheld jurisdiction because the petitioners voluntarily engaged in continuous and systematic activities in New York that extend far beyond those associated with listing their shares on the NYSE.[12] The Second Circuit did not rely on petitioners' NYSE-related activities, but rather on their maintenance of a constant presence in New York, the aim of which is to promote and develop petitioners' relations with the American investor community. Petitioners maintain an Investor Relations Office in New York City, administered by James Grapsi, their "Manager of Investor Relations," who devotes all of his time to the provision of investor relations services on behalf of petitioners. The office is wholly devoted to facilitating the relations of the parent holding companies, the defendants Royal Dutch and Shell Transport, with the investment community, and all office expenses are paid by petitioners, amounting to a significant $500,000 per year

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[12] Cases such as *Sunrise Lumber Co. v. Homer D. Biery Lumber Co.*, 185 N.Y.S. 711 (App. Div. 1921), *cited in* Pet. at 22, are readily distinguishable on their facts. As the Second Circuit correctly noted, cases holding that activities connected with NYSE listings – including the preparation of filings for the Securities and Exchange Commission (SEC) and the employment of transfer agents and depositories for their shares – are not sufficient to support the exercise of personal jurisdiction, do not require that such contacts be disregarded when conducting a jurisdictional analysis. (App. A-13.) Neither should they dictate the result in this case, where the record includes a broad range of contacts *in addition to* those incidental to the petitioners' NYSE listing.

commitment.[13] (App. A-6.) These contacts are hardly accidental, but rather, purposeful and volitional. *See Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Their entire purpose is to promote petitioners' good relationships with existing or potential U.S. investors and to ensure ready access to U.S. capital markets, for which petitioners are willing to spend half a million dollars a year.

This accumulation of contacts led the Second Circuit to the unremarkable conclusion that petitioners maintained "a substantial 'physical corporate presence' in the State, permanently dedicated to promoting the petitioners' interests"[14] (App. A-16) and sufficient to support personal jurisdiction. Under long-established New York law, a foreign corporation is subject to general personal jurisdiction if it is "doing business"

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[13]The Investor Relations Office fields inquiries from investors and potential investors throughout the United States, mails information about petitioners to thousands of individuals and entities throughout the United States, and arranges meetings between company officials, potential investors, and financial analysts throughout the United States. (App. A-6.) Grapsi characteristically seeks the petitioners' approval before scheduling meetings and making other similar decisions. (App. A-6.) Moreover, petitioners hold accounts in New York banks, retain New York counsel, and have participated in at least one lawsuit in New York as defendants, without contesting jurisdiction.

[14]The string of cases cited by petitioners holding that solicitation of orders or promotion of products are inadequate to support general jurisdiction, *see* Pet. at 22-23, all involved isolated or occasional activity, not the kind of undeniable continuous presence at issue here. For similar reasons, the Second Circuit's opinion does not conflict with this Court's opinion in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), which held an exercise of general jurisdiction unconstitutional because the record showed only isolated purchases of equipment, not the kind of continuous, systematic, and permanent in-forum business activity conducted by petitioners.

in the state. *See* N.Y. C.P.L.R. § 301.[15] The Second Circuit's settled interpretation of New York procedural law is hardly worthy of this Court's *de novo* review.[16]

Petitioners grossly distort the opinion below when they assert that it justifies general jurisdiction solely because a corporation is listed on a stock exchange and performs acts in the forum designed to cultivate investor relations. Pet. at 21. No such general statement can be found in the Second Circuit's opinion, nor can such a blanket rule be inferred from it. To the contrary, it is petitioners who promote adoption of a bright-line rule: that the promotion and solicitation of sale of securities can

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[15]An extensive line of state and federal cases has given definition to New York's "doing business" requirement, in both its statutory and constitutional dimensions. Under this body of law, the activities of the defendant cannot be occasional or casual; instead, the plaintiff must show that the defendant has engaged in "continuous, permanent and substantial" activity in New York. *See, e.g., Landoil Resources Corp. v. Alexander & Alexander Services, Inc.*, 918 F.2d 1039, 1043 (2d Cir. 1991). The Second Circuit correctly determined that the exercise of general personal jurisdiction was proper because petitioners' activities in this case rose to that level.

[16]Although petitioners claim that "[a]ssertion of jurisdiction over petitioners also violates the fairness requirement of the Due Process Clause," Pet. at 21 n.14, petitioners' forum contacts match or exceed those of defendants in this Court's due process cases upholding the exercise of general personal jurisdiction. *Cf. Argentina v. Weltover*, 504 U.S. 607, 617-20 (1992) (Scalia, J.) (finding no due process violation in holding that personal jurisdiction existed over Argentina based on such contacts as issuance of negotiable dollar-denominated debt instruments payable in New York and appointment of financial agent in that city), *aff'g* 941 F.2d 145 (2d Cir. 1991); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447-48 (1952) (upholding personal jurisdiction where president of defendant corporation maintained office in forum state from which he kept files, carried on correspondence, held occasional meetings, paid salaries, and maintained in-state bank accounts).

never form the basis for general jurisdiction, no matter what the extent, quality, or nature of the contacts associated with that activity. Moreover, although respondents argued below that petitioners' subsidiaries should be viewed as their agents for purposes of assessing jurisdictional contacts, the Second Circuit narrowly rested personal jurisdiction "over the defendants on the basis of the activities of the Investor Relations Office" (App. A-9 n.4), and thus, did "not reach any of the other jurisdictional issues raised by" respondents. (App. A-9 n.4.) As with petitioners' Question Four, *see* Part I, *supra,* it would be pointless and premature for this Court now to review whether the Investor Relations Office provided sufficient contacts to sustain personal jurisdiction over petitioner when petitioners' huge subsidiaries maintain far more extensive contacts with New York that would amply support exercise of personal jurisdiction on remand.[17]

In sum, the personal jurisdiction issue is entirely uncertworthy. Petitioners ask this Court to engage in both an unwarranted re-evaluation of New York civil procedure law and an unprecedented departure from the settled method applied by

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[17]Petitioners own huge subsidiary companies that do extensive business in the United States. These include Shell Petroleum, Inc. (SPI), a Delaware corporation, which owns all the shares of Shell Oil Company (Shell Oil), the well-known oil and gas concern, which obviously has extensive operations in New York. Although the Court of Appeals ultimately based personal jurisdiction on the activities of the Investor Relations Office, it also found that petitioners' contacts with New York apparently satisfied both the "solicitation plus" standard for minimum contacts and the fairness criteria found in Justice O'Connor's opinion in *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 113 (1987) (O'Connor, J.) *See* App. A-14 to A-17. Were this Court now to grant and reverse on this issue, those holdings would provide an alternative basis for sustaining the Second Circuit's personal jurisdiction ruling on remand, again obviating the need for this Court's review.

the courts in more than five decades since *International Shoe*. This Court ought not waste its resources reviewing a correct, fact-specific application of settled state procedural law, which creates no circuit split, and is fully supported by jurisdictional facts in the record.

IV. A FEDERAL DISTRICT COURT MAY EXERCISE ORIGINAL JURISDICTION UNDER THE ALIEN TORT CLAIMS ACT OVER A SUIT BY ALIENS, FOR TORTS ONLY, COMMITTED IN VIOLATION OF THE LAW OF NATIONS.

Finally, petitioners urge this Court to grant certiorari to consider an issue never briefed nor argued until their petition for rehearing *en banc*: namely, whether the line of lower court decisions beginning with the Second Circuit's decision in *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), should be reversed as an "unwarranted expansion of the power and obligation of the federal courts." Pet. at 13. Even if this issue were not entirely premature, *see* Part I, *supra*, this Court need not grant certiorari to "secure uniformity of decision," SUP. CT. R. 10, for the simple reason that no circuit split exists on the jurisdictional question raised by the petition. In 1980, in *Filártiga*, the Second Circuit unanimously held that the ATCA affords federal jurisdiction where aliens sue for tortious injuries committed in violation of customary international law. As this Court "has stated time and time again . . . courts must presume that a legislature says in a statute what it means and means in a statute what it says." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Following the ATCA's precise words, *Filártiga* ruled that the ATCA means just what it says: when an alien brings a suit for torts in violation of the law of nations, the federal court may properly assert jurisdiction under 28 U.S.C. § 1350.

Since 1980, federal courts in seven circuits have consistently reaffirmed *Filártiga* and its underlying principles.[18] Contrary to petitioners' claim, there is no split between these rulings and the D.C. Circuit's fractured decision in *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1003 (1985). In *Tel-Oren*, a sharply splintered panel (Edwards, Bork & Robb, JJ.) divided three ways in refusing to *extend* the *Filártiga* holding to a claim of terrorism against the Palestine Liberation Organization, but nowhere stated a holding conflicting with *Filártiga*.[19] In the seventeen

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[18]*Filártiga* has been followed by circuit and/or district courts in the First Circuit, *see, e.g., Xuncax v. Gramajo*, 886 F. Supp. 162, 178-83 (D. Mass. 1995), the Second Circuit, *see, e.g., Kadic v. Karadzic*, 70 F.3d 232, 238 (2d Cir. 1995), *cert. denied*, 518 U.S. 1005 (1996); the Third Circuit, *see, e.g., Iwanowa v. Ford Motor Company*, 67 F. Supp.2d 424, 438-41 (D.N.J. 1999); *Jama v. U.S. Immigration and Naturalization Service*, 22 F. Supp.2d 353, 362-64 (D.N.J. 1998); the Fifth Circuit, *see, e.g., Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 164-65 (5th Cir. 1999); the Ninth Circuit, *see, e.g., Alvarez-Machain v. United States*, 96 F.3d 1246 (9th Cir. 1996), *amended by* 107 F.3d 696, 702-703 (1997), *cert. denied*, 522 U.S. 814 (1997); *In re Estate of Marcos*, 25 F.3d 1467, 1472-76 (9th Cir. 1994), *cert. denied*, 513 U.S. 1126 (1995); *In re Estate of Marcos Human Rights Litigation*, 978 F.2d 493, 498-503 (9th Cir. 1992), *cert. denied*, 508 U.S. 972 (1993); the Eleventh Circuit, *see, e.g., Abebe-Jira v. Negewo*, 72 F.3d 844, 846-48 (11th Cir.), *cert. denied*, 519 U.S. 830 (1996); and the D.C. Circuit, *see, e.g., Doe v. Islamic Salvation Front (FIS)*, 993 F. Supp. 3, 7-8 (D.D.C. 1998).

[19]As Judge Bork noted, the division within *Tel-Oren's* panel made "it . . . impossible to say even what the law of this circuit is" regarding the scope of the ATCA. *Tel-Oren*, 726 F.2d at 823 (Bork, J., concurring). Petitioners cite Judge Edwards' *Tel-Oren*, concurrence to suggest that this matter demands Supreme Court review, Pet. at 29, yet fail to note that in every case in which this issue has been raised, including *Tel-Oren* itself, this Court has not seen fit to grant review. *See Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1003

years since *Tel-Oren*, not one court has found its contradictory opinions to be persuasive authority, much less to create a conflict demanding certiorari review.[20]

Citing isolated law review articles, petitioners broadly challenge the constitutionality of federal court subject matter jurisdiction over torts in violation of the law of nations, a practice that has prevailed in the federal courts for more than 210 years. Yet again, petitioners ignore a central fact: that federal jurisdiction in this case rests not on unanchored federal common law, but on the ATCA, a federal statute.[21] Whether or not the

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(1985); cases cited in note 18, *supra*. In urging this Court to deny certiorari in *Tel-Oren*, then-Solicitor General Rex Lee argued:

> Neither the court of appeals' judgment order nor the reasoning set forth in the lengthy concurring opinions of the participating judges creates any clear conflict in the circuits. The only proposition for which the judgment below may fairly be read – that in the circumstances of this case, petitioners have not alleged facts sufficient to support the district court's exercise of subject matter jurisdiction . . . does not conflict with the Second Circuit's decision in *Filártiga*.

U.S. Brief as *Amicus Curiae*, *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984), 24 I.L.M. 427, 431 (1985).

[20]Judges Edwards and Bork took pains to point out that their reading of the ATCA would not conflict with the decision of any other circuit, including the Second Circuit's decision in *Filártiga*. *See Tel-Oren*, 726 F.2d at 790-91 (Edwards, J); *id.* at 819-20 (Bork, J.) *See also Doe v. Islamic Salvation Front (FIS)*, 993 F.Supp. 3 (D.D.C. 1998) (district court decision following *Filártiga*, on the ground that *Tel-Oren* announced no D. C. Circuit rule).

[21]Thus, none of the Supreme Court cases cited by petitioners, Pet. at 25-26, are relevant to petitioners' constitutional claim, because none concern federal common law created under federal statutes. Most of these cases actually support the principle that federal courts have jurisdiction over questions of international law. *See Ker v. Illinois*, 119 U.S. 436, 444 (1886) ("a question of . . . the law of nations [is one] of which that court is bound

federal courts have "independent" constitutional authority to assert subject matter jurisdiction over claimed violations of international law (the issue raised by petitioners, Pet. at 24), there can be no doubt that *Congress* – which has power under Art. I, sec. 8, cl. 10 of the Constitution to define and punish offenses against the law of nations – has the power to authorize federal subject matter jurisdiction over torts in violation of international law. The first Congress enacted the ATCA as part of the First Judiciary Act of 1789, recognizing that a tortfeasor who commits torts in violation of the law of nations could be sued wherever he might be found. Because such cases tend to raise questions of international and foreign affairs law, the ATCA encourages the resolution of such suits in federal, not state, court. *See generally* Edwin D. Dickinson, *The Law of Nations as Part of the National Law of the United States* (pts. 1 & 2), 101 U. PA. L. REV. 26, 792 (1952). This Court has accordingly described the ATCA as one of several statutes "reflecting a concern for uniformity in this country's dealings with foreign nations and indicating a desire to give matters of international significance to the jurisdiction of federal institutions." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S.

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to take notice, *as it is of the courts of the United States*") (emphasis added); *Huntington v. Attrill*, 146 U.S. 657, 683 (1892) (questions of international law "must be determined in the first instance by the court, state *or national*, in which the suit is brought," and when such questions are brought in federal courts, the federal court "must decide for itself, uncontrolled by local decisions") (emphasis added); *Oliver Am. Trading Co. v. Mexico*, 264 U.S. 440, 443 (1924) (customary international law is "applicable as fully to suits in the state courts *as to those prosecuted in the courts of the United States*") (emphasis added). In *New York Life Insurance Co. v. Hendren*, 92 U.S. 286 (1875), this Court declined to re-examine a state court decision regarding the effect of the Civil War upon a life insurance contract, but in no sense concluded that "uncodified international law does not present a federal question or arise under the laws of the United States." Pet. at 25.

398, 427 n.25 (1964). No one disputes Congress' constitutional power to create a cause of action for violations of international law and to assign jurisdiction over such claims to the federal courts.[22] Because the ATCA creates a cause of action for torts in violation of international law, federal jurisdiction is proper over such claims because they raise federal questions "arising under" federal law, 28 U.S.C. § 1331.[23]

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[22]To the contrary, every court that has decided a case based on the ATCA has so held. *See, e.g., Abebe-Jira v. Negewo*, 72 F.3d at 848 (ATCA properly confers federal jurisdiction "while delegating to the courts the task of fashioning remedies") (citing *Textile Workers of America v. Lincoln Mills*, 353 U.S. 448 (1957)); *In re Estate of Marcos*, 25 F.3d at 1472-74; *Filártiga*, 630 F.2d at 885-87 (Congress properly granted federal courts jurisdiction over claims arising under international law, which is part of federal common law); *Eastman Kodak Company v. Kavlin*, 978 F. Supp. 1078, 1090 (S.D. Fla. 1997) (ATCA is properly based upon Congress' Article I, § 8, cl. 10 power to "define and punish . . . offenses against the Law of Nations").

[23]Petitioners acknowledge Congress' power to create federal claims for violations of international law. Pet. at 25. Even Professors Bradley and Goldsmith, upon whom petitioners rely for their core argument denying that customary international law is federal law, recognize that ATCA is constitutional if interpreted as creating a cause of action for violations of international law or as delegating to the federal courts the task of defining such a cause of action. Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815, 872-73 (1997). Petitioners ignore sources dating back over 200 years, to shortly after ATCA was enacted, which make clear that the ATCA provides not only a basis of jurisdiction, but also a civil remedy. *See, e.g.*, 1 OP. ATT'Y GEN. 57, 59 (1795) (ATCA grants civil remedy to aliens injured by plundering of British colony in violation of law of nations); 26 OP. ATT'Y GEN. 250, 253 (1907) (ATCA "provide[s] a forum and a right of action" if acts violate the law of nations). In enacting the TVPA in 1991, "Congress endorsed the *Filártiga* line of cases" and "recognized that the Alien Tort Claims Act confers both a forum and a private right of action to aliens alleging a violation of international

Petitioners wrongly claim that *Filártiga*'s reliance on international law as federal common law conflicts with this Court's holdings dating from *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938). In *Erie*, this Court rejected the old "general federal common law," but on the same day acknowledged certain areas of distinctly federal concern, including foreign relations, in which a true federal common law remains appropriate.[24] Since then, this Court has held repeatedly that federal common law is a proper basis of federal court subject matter jurisdiction in foreign relations cases.[25] *Filártiga*'s

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law." *Abebe-Jira*, 72 F.3d at 848; *Lafontant v. Aristide*, 844 F. Supp. 128, 138 (E.D.N.Y. 1994) (noting that "[t]he TVPA codifies the holding in *Filártiga* ").

[24]*See, e.g., Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938) (Brandeis, J.) (opinion by *Erie*'s author reaffirming, on the same day that *Erie* was decided, existence of zones of specialized federal common law upon which state law cannot be conclusive). *See also* Harold Hongju Koh, *Is International Law Really State Law?*, 111 HARV. L. REV. 1824, 1830-41 (1998) (discussing *Erie* and federal common law of international relations).

[25]*See, e.g., First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 623 (1983) (ruling based on federal common law, which is "necessarily informed by international law principles"); *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640-41 (1981) (although there is "no federal general common law," federal courts have authority to formulate "federal common law" in a few "narrow areas," including "international disputes implicating . . . our relations with foreign nations"); *Sabbatino*, 376 U.S. at 426-27 ("enclaves of federal judge-made law . . . bind the States" where "necessary to protect uniquely federal interests," including rules governing "matters of international significance"); *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988); *Illinois v. City of Milwaukee*, 406 U.S. 91, 99-100 (1972). Petitioners nowhere address the logical outgrowth of their argument: that if customary international law is not federal law, it must be state law, whose potential misapplication by state courts would be wholly immune from this Court's

holding that international law is governed by federal common law thus fits comfortably within this well-settled Supreme Court doctrine.

In sum, *Filártiga*'s application of the ATCA has been held constitutional by every federal court that has considered the question. Although petitioners' novel theory of customary international law has been urged by a few commentators, that theory has not been adopted by a single court, conflicts with the considered view of the American Law Institute's *Restatement (Third) of Foreign Relations Law,*[26] and has been resoundingly rebutted by a long list of experts not cited by petitioners.[27] Finally, as Chief Judge Walker has noted, petitioners cry wolf when they claim that the ATCA has somehow opened the

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certiorari examination. *See* Koh, *supra* note 24, at 1829 (this "theory would allow Massachusetts to deny the customary international law protection of head-of-state immunity to Queen Elizabeth on tort claims arising out of events in Northern Ireland, whereas the forty-nine other states could choose instead to grant the Queen every conceivable variant of full or partial immunity").

[26]RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 111, at 45 (1986) ("Customary international law, like other federal law, is part of the 'laws . . . of the United States'").

[27]*See, e.g.*, Koh, *supra* note 24; Louis Henkin, *International Law as Law in the United States*, 82 MICH. L. REV. 1555 (1984); Gerald L. Neuman, *Sense and Nonsense about Customary International Law: A Response to Professors Bradley and Goldsmith*, 66 FORDHAM L. REV. 371 (1997); Beth Stephens, *The Law of our Land: Customary International Law as Federal Law After Erie*, 66 FORDHAM L. REV. 393, 428 (1997); Derek Jinks & Ryan Goodman, Filártiga's *Firm Footing: International Human Rights and Federal Common Law*, 66 FORDHAM L. REV. 463 (1997).

floodgates of litigation.[28] Inasmuch as the courts hearing such cases are only following the instructions of Congress, Congress has shown no inclination to restrict the ATCA's application.[29] Nor should this Court exercise its certiorari jurisdiction to resolve intellectual differences among academic commentators in a case that so manifestly fails the standards set forth in Supreme Court Rule 10.

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[28]As Chief Judge Walker of the Second Circuit has noted:

> It is safe to say that, quantitatively, international human rights law is not a major, or even a minor, component of the business of federal courts: it is a minuscule part of what we do . . . . The fact that Congress has not [amended or repealed the ATCA], and indeed, appears to have endorsed the *Filártiga* approach in the legislative history of the Torture Victim Protection Act, indicates that the substantial concerns that have been voiced are, at least to this point, largely theoretical.

Hon. John M. Walker, Jr., *Domestic Adjudication of International Human Rights Violations Under the Alien Tort Statute*, 41 ST. LOUIS U.L.J. 539, 560 (1997). Moreover, the federal courts are fully capable of dismissing ATCA cases when they conclude that they do not meet the exacting standards of the statute. *See, e.g., Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161; (5th Cir. 1999) *Bigio v. Coca Cola Co.*, – F.3d –, 2000 WL 331522060 (2nd Cir. 2000); *Wong-Opasi v. Tennessee State University*, 229 F.3d 1155 (6th Cir. 2000); *Martinez v. City of Los Angeles*, 141 F.3d 1373 (9th Cir. 1998); *Hamid v. Price Waterhouse*, 51 F.3d 1411 (9th Cir. 1995) (all granting motions to dismiss).

[29]To the contrary, Congress has twice legislated in this area over the past decade, and both times has left the ATCA intact, in the process expanding, not restricting, the categories of international human rights claims cognizable in federal court. *See* TVPA (1991) (extending claims for torture and extrajudicial execution to U.S. citizens as well as aliens); and the "terrorist state" exception to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(7) (2000) (creating exception to sovereign immunity for lawsuits alleging specified human rights violations against certain States).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully Submitted,

HAROLD HONGJU KOH
JAMES J. SILK
DEENA HURWITZ
ALLARD K. LOWENSTEIN
INTERNATIONAL
HUMAN RIGHTS CLINIC,
YALE LAW SCHOOL
127 Wall Street
P.O. Box 208215
New Haven, CT. 06510
203-432-4932

JODIE KELLEY
JENNER & BLOCK
601 13th Street, NW
Washington, D.C. 20005
202-639-6058

PAUL HOFFMAN
SCHONBRUN, DE SIMONE,
SEPLOW, HARRIS &
HOFFMAN
723 Ocean Front Walk
Venice, CA 90210
310-396-0731

JUDITH BROWN CHOMSKY *
P.O. Box 29726
Elkins Park, PA 19027
215-782-8367

*Counsel of Record

JENNIFER M. GREEN
BETH STEPHENS
MICHAEL RATNER
CENTER FOR
CONSTITUTIONAL
RIGHTS
666 Broadway, 7th floor
212-614-6431

RICK HERZ
EARTHRIGHTS
INTERNATIONAL
2020 Massachusetts Ave.
Washington, D.C. 20036
202-466-5188

JULIE SHAPIRO
RONALD C. SLYE
SEATTLE UNIVERSITY
SCHOOL OF LAW
900 Broadway
Seattle, WA 98122
206-398-4043

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Counsel for Respondents